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10/730,901	12/10/2003	Jonathan Maron	5231-088-US01	5193

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Hanify & King, P.C.
1055 Thomas Jefferson Street, NW
Suite 400
WASHINGTON, DC 20007

EXAMINER	
KANG, INSUN	

ART UNIT	PAPER NUMBER
2193	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/730,901	MARON, JONATHAN	
	Examiner	Art Unit	
	INSUN KANG	2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 September 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-9,11-16,18-23 and 25-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 2, 4-9, 11-16, 18-23, and 25-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to the RCE amendment filed on 9/29/2009.

2. Claims 1, 2, 4-9, 11-16, 18-23, and 25-28 are pending in the application.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1, 2, 4-9, 11-16, 18-23, and 25-28 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-44 of copending Application No.10/730897 hereafter '897. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to substantially the same invention and recites only obvious differences which would have been obvious to one of ordinary skill in the art of program development at the time of invention such as simply (i) omitting/adding steps or elements along with their functions, and/or (ii) implementing a system, product, tuning tool having computer program for performing the method steps.

For example, instant claim 1 claims tuning an application deployed in an application server, invoking an application tuning tool to display an interface including displays of current values of application parameters and measurements of performance of the application, receiving specifications of values of application tuning parameter, tuning the application using the received specified parameter value, display an interface including displays of current values of application parameters and measurements of performance of the application as recited in '897 claim 1. The instant claim does not explicitly recite the interface displays emphasize importance of a particular parameter over another parameter as recited in '897 claim 1. However, it would have been obvious for one of ordinary skill in the art of program development at the time the instant invention was made to modify the co-pending method by omitting the step of emphasizing importance of a particular parameter over another parameter recited in co-pending claim 1 for the purpose of expediting the method.

This is a provisional obviousness-type double patenting rejection.

Claim Objections

5. Claims 4-7, 11-14, 18-21, 25-28 are objected to because of the following informalities: per claims 4, 11, 18 and 25, the claims are dependent on the canceled parent claims 3, 10, 17, and 24 respectively. Claims 5-7, 12-14, 19-21, and 26-28 are objected due to the dependency on the parent claims 4, 11, 18, and 25. Appropriate correction is required.

Specification

6. The use of the trademark Java™ (i.e. page 1, claim 7 etc) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1, 2, 4, 8, 9, 11, 15, 16, 18, 22, 23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent. RE38865) hereafter "Dumarot" in view of Sugino et al. (US 7,512,888) hereafter Sugino.

Per claim 1:

Dumarot discloses:

-tuning an application deployed in an application server (i.e. "*adjust system or application parameters in order to optimize the operation of the application*," col. 7, lines 1-25; col. 6 lines 20-26; "an optimization process 300 that the *local computer 12 or server 130 uses to optimize software applications* 138 and system response or utilization, or to provide

recommendations 480… the optimizer 136 gathers relevant system information including: operating system 150 version and release data, installed hardware components, hardware configuration, and software configurations (col. 5, lines 34-41);

-deploying the application in the application server; (i.e. "*program application performance on a computer system* … configuration information and performance capabilities based on characteristics of the program/system …the configuration information and the performance capabilities are used to optimize configuration parameters of the program applications so as to enhance the performance of the workstation in running the program system," col. 3 lines 40-52)

-invoking an application tuning server-side component operable to retrieve information relating to parameters of the deployed application that are to be tuned (i.e. "The optimization database table …the *optimizer program*…on the local computer and/or the remote computer. The optimizer program *contains or accesses* a dynamic monitor 137 of system and application activity…*particular settings of the application* that may affect application performance," col. 4, lines 43-59; "the optimizer 136 gathers relevant system information…the optimizer may query the current CPU use, memory use, or other activity," col. 5, lines 37-59)

- current values of parameters of the deployed application that are to be tuned and measurements of performance of the application effected by the current values of the parameters (i.e." the optimizer may query the current CPU use, memory use, or other activity," col. 5, lines56-59; "control various parameters 420, associated with a particular application name," col. 5 lines 41-55; col. 7 lines 9-25);

Dumarot does not explicitly teach that the information relating tot each parameter is accessible by the selection of a tab for each respective parameter and displayed in a parameter panel and the measurements of performance are displayed in a measurement panel.

However, Sugino teaches it was known in the pertinent art, at the time applicant's invention was made to display a screen visually showing a configuration of a component on an associated tab in the screen and an effect of a change in the configuration (i.e. col. 2 lines 45-60). It would have been obvious for one having ordinary skill in the art to modify Dumarot's disclosed system to incorporate the teachings of Sugino. The modification would be obvious because one having ordinary skill in the art would be motivated to visualize parameter settings and the performance measurements of the settings so that the configuration and the effects of the configuration can be easily understood.

- Dumarot in view of Sugino further discloses: displaying the information specifically relating to a parameter of the parameters of the deployed application and at least one measurement of performance of the application effected by the current value of the parameter in response to the selection of an object associated with the parameter from a display (i.e. col. 7 lines 9-30; col. 8 lines 45-63);

Sugino further discloses wherein the value of the at least one measurement of performance of the application is displayed in the measurement panel (i.e. col. 3 lines 30-42);

Dumarot further discloses: receiving specifications of values of application tuning parameters (i.e. "The *optimizer program* 136 may contain a graphical user interface 139, used to *specify settings or provide information to the user.*(col. 4, lines 55-58)

-and tuning the deployed application using the received specified parameter values by modifying the current value of the parameter being used by the deployed application (i.e. "the optimizer … can *adjust the following parameter settings* …to adjust performance," col. 6 lines 9-26)

Sugino further discloses: displaying an effect of the modification of the value of the parameter of the deployed application to the ate least one measurement of the performance of the application in the display of the information specifically relating to the parameter in real time (i.e. col. 12 lines 13-24).

Per claim 2:

Dumarot further discloses:

-wherein the step of invoking the application tuning server-side component is performed in response to an action by an administrator, engineer, or user of the application server (i.e. "user-specified preferences," col. 3, lines 15-20; the user
may enter text or data … that specifies a level of optimization …application settings," col. 6 lines 9-20).

Per claim 4:

Dumarot further discloses:

-wherein the application tuning server-side component is operable to accept input from the administrator, engineer, or user to specify values of the parameters of the deployed application that are to be tuned (i.e. "user-specified preferences," col. 3, lines 15-20; the user

may enter text or data … that specifies a level of optimization …application settings," col. 6 lines 9-20).

Per claims 8, 9, and 11, they are the system versions of claims 1, 2, and 4, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1, 2, and 4 above.

Per claims 15, 16, and 18, they are the product versions of claims 1, 2, and 4, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1, 2, and 4 above.

Per claims 22, 23, and 25, they are the application component versions of claims 1, 2, and 4, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1, 2, and 4 above.

9. Claims 5, 6, 12, 13, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent. RE38865) hereafter "Dumarot," in view of Sugino et al. (US 7,512,888) hereafter Sugino, and further in view of Applicant's Admitted Prior Art (hereinafter referred to as "APA") disclosed in the instant application.

Per claim 5:

Dumarot discloses adjusting application parameters for optimal performance (i.e. col. 7, lines 1-25; col. 6 lines 20-26) but Dumarot and Sugino do not explicitly teach that the values of application parameters comprise at least one of: Database Connection Pool size, Thread Pool Size, HTTP connection pool size, HTTP incoming connection queue length, HTTP Socket timeout, Session pool size, and Java Virtual Machine tuning parameters. However, APA teaches

tuning such configuration parameters were known in the pertinent art, at the time applicant's invention was made, to minimize response time or maximize throughput etc ("modification of multiple configuration parameters such as thread pool size, connection pool size, transaction timeout period, various Java Virtual Machine…parameters," page 1). It would have been obvious for one having ordinary skill in the art to modify Dumarot and Sugino's disclosed system to incorporate the teachings of APA. The modification would be obvious because one having ordinary skill in the art would be motivated to optimize performance by tuning configuration parameters such as thread pool size (page, lines 19-21) as suggested by APA.

Per claim 6:

APA further discloses:

wherein the measurements of performance of the application comprise at least one of: Overall transactions per second, Average Request Time, HTTP transactions per second, Database connections used, HTTP connections used, Active thread count, Overall throughput, Database throughput, HTTP throughput (i.e. "application performance is typically measured in terms of response time, transactions per second, throughput etc," page 1, lines 13-18).

Per claims 12 and 13, they are the system versions of claims 5 and 6, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 5 and 6 above.

Per claims 19 and 20, they are the product versions of claims 5 and 6, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 5 and 6 above.

10. Claims 7, 14, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent. RE38865) hereafter "Dumarot," in view of Sugino et al. (US 7,512,888) hereafter Sugino, further in view of Applicant's Admitted Prior Art (hereinafter referred to as "APA") disclosed in the instant application, and still further in view of Bowker ("Superior app management with JMX," JavaWorld, 6/8/2001).

Per claim 7:

Dumarot, Sugino, and APA do not explicitly discloses that the application tuning server-side component is implemented using Java Management Extensions. However, Bowker teaches JMX was known in the pertinent art, at the time applicant's invention was made, to enable to "query the configuration settings and change them during runtime (i.e. page 1, lines 1-4). It would have been obvious for one having ordinary skill in the art to modify the disclosed system of Dumarot in view of Sugino and APA to incorporate the teachings of Bowker. The modification would be obvious because one having ordinary skill in the art would be motivated to create a consistent approach to managing applications in real time (i.e. page 1, lines 1-4) as suggested by Bowker.

Per claim 14, it is the system version of claim 7, respectively, and is rejected for the same reasons set forth in connection with the rejection of claim 7 above.

Per claim 21, it is the product version of claim 7, respectively, and is rejected for the same reasons set forth in connection with the rejection of claim 7 above.

11. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent. RE38865) hereafter "Dumarot," in view of Sugino et al. (US 7,512,888) hereafter Sugino, and further in view of Bowker ("Superior app management with JMX," JavaWorld, 6/8/2001).

Per claim 26:

Dumarot disclose an optimizer tuning configuration parameters but Dumarot and Sugino do not explicitly discloses that the optimizer is implemented using Java Management Extensions. However, Bowker teaches JMX was known in the pertinent art, at the time applicant's invention was made, to enable to "query the configuration settings and change them during runtime (i.e. page 1, lines 1-4). It would have been obvious for one having ordinary skill in the art to modify the disclosed system of Dumarot and Sugino to incorporate the teachings of Bowker. The modification would be obvious because one having ordinary skill in the art would be motivated to create a consistent approach to managing applications in real time (i.e. page 1, lines 1-4) as suggested by Bowker.

12. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent. RE38865) hereafter "Dumarot," in view of Sugino et al. (US 7,219,300) hereafter Sugino, and further in view of Bowker ("Superior app management with JMX," JavaWorld, 6/8/2001), and still further in view of Applicant's Admitted Prior Art (hereinafter referred to as "APA") disclosed in the instant application.

Per claim 27:

Dumarot discloses adjusting application parameters for optimal performance (i.e. col. 7, lines 1-25; col. 6 lines 20-26) and Bowker discloses a configuration management tool of any application server, JMX (page 1, lines 1-4) but Dumarot, Sugino, and Bowker do not explicitly teach that the values of application parameters comprise at least one of: Database Connection Pool size, Thread Pool Size, HTTP connection pool size, HTTP incoming connection queue length, HTTP Socket timeout, Session pool size, and Java Virtual Machine tuning parameters. However, APA teaches tuning such configuration parameters were known in the pertinent art, at the time applicant's invention was made, to minimize response time or maximize throughput etc ("modification of multiple configuration parameters such as thread pool size, connection pool size, transaction timeout period, various Java Virtual Machine…parameters," page 1). It would have been obvious for one having ordinary skill in the art to modify the systems of Dumarot, Sugino, and Bowker to incorporate the teachings of APA. The modification would be obvious because one having ordinary skill in the art would be motivated to optimize performance by tuning configuration parameters such as thread pool size (page, lines 19-21) as suggested by APA.

Per claim 28:

APA further discloses:

wherein the measurements of performance of the application comprise at least one of: Overall transactions per second, Average Request Time, HTTP transactions per second, Database connections used, HTTP connections used, Active thread count, Overall throughput,

Database throughput, HTTP throughput (i.e. "application performance is typically measured in terms of response time, transactions per second, throughput etc," page 1, lines 13-18).

Response to Arguments

13. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to INSUN KANG whose telephone number is (571)272-3724. The examiner can normally be reached on M-R 7:30-6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis A. Bullock, Jr. can be reached on 571-272-3759. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Insun Kang/
Primary Examiner, Art Unit 2193